



This document is scheduled to be published in the Federal Register on 07/11/2014 and available online at <http://federalregister.gov/a/2014-16316>, and on FDsys.gov
Billing Code: 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5696-N-10]

**Additional Clarifying Guidance, Waivers, and Alternative Requirements for Grantees
in Receipt of Community Development Block Grant Disaster Recovery Funds
under the Disaster Relief Appropriations Act, 2013**

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice provides additional clarifying guidance, waivers, and alternative requirements for all Community Development Block Grant (CDBG) disaster recovery grantees in receipt of funds under the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2)¹. To date, the Department has allocated \$14.1 billion under the Act to assist recovery in the most impacted and distressed areas identified in major disaster declarations due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

DATES: Effective Date: **INSERT DATE 5 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER.**

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the

¹ Luzerne, PA initially received disaster assistance under Pub. L. 112-55 and was provided with additional assistance through Pub. L. 113-2. The waiver in this Notice specific to Luzerne, PA applies to both its 112-55 funds and 113-2 funds as described herein.

"800" number, these telephone numbers are not toll-free.) E-mail inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2, approved January 29, 2013) (Appropriations Act) made available \$16 billion in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. As the Appropriations Act requires funds to be awarded directly to a State, or unit of general local government (hereinafter, local government), at the discretion of the Secretary, the term “grantee” refers to any jurisdiction that has received a direct award from HUD under the Appropriations Act.

On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG-DR grants under the Appropriations Act to \$15.18 billion. To date, \$14.1 billion has been allocated for the areas most impacted by Hurricane Sandy and other

disasters occurring in 2011, 2012, and 2013. To describe these allocations and the accompanying requirements, the Department published multiple **Federal Register** notices: March 5, 2013 (78 FR 14329), April 19, 2013 (78 FR 23578), May 29, 2013 (78 FR 32262), August 2, 2013 (78 FR 46999), November 18, 2013 (78 FR 69104), March 27, 2014 (78 FR 17173), and June 3, 2014 (79 FR 31964), referred to collectively in this Notice as the “Prior Notices”). The requirements of the Prior Notices continue to apply, except as modified by this Notice.²

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD’s obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This Notice clarifies or modifies requirements of the Prior Notices. Except as noted, the waivers and alternative requirements in this Notice apply to all grants under the Appropriations Act. For each waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the

² Links to the Prior Notices, the text of the Appropriations Act, and additional guidance prepared by the Department for CDBG–DR grants, are available on HUD’s Web site under the Office of Community Planning and Development, Disaster Recovery Assistance: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi. The same information is also available on HUD’s OneCPD Web site: <https://www.onecpd.info/cdbg-dr/>.

requirements of the Appropriations Act, waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

1. Reporting of contracts. Public Law 113-2 requires grantees “to maintain on a public website information accounting for how all grant funds are used, including details of all contracts and ongoing procurement processes.” To streamline the reporting requirements for grantees by eliminating duplicative reporting efforts, and to provide greater transparency regarding procured contracts, HUD is removing the requirement that grantees identify contracts above \$25,000 in HUD’s Disaster Recovery Reporting System (DRGR) because grantees are already reporting this information in the Federal Subaward Reporting System (FSRS) through USA Spending [usaspending.gov]. Grantees are still required to post contract information as described below. HUD is amending requirements described in the March 5, 2013 Notice as follows:

a. Paragraph 2.b. at 78 FR 14337 is amended to exclude the requirement for grantees “to identify in the DRGR system any contract over \$25,000,” and now reads as follows: “DRGR Action Plan. Each grantee must enter its Action Plan for Disaster Recovery, including performance measures, into HUD’s DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports, and permits HUD review of compliance requirements.

The Action Plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG–DR funds. The grantee may enter activities into DRGR before or after submission of the Action Plan to HUD. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered

into the system for any entity carrying out a CDBG-DR funded activity, including the grantee, recipient(s) and subrecipient(s), contractor(s) and developers carrying out a CDBG-DR activity.

Each activity entered into the DRGR system must also be categorized under a “project”. Typically, projects are based on groups of activities that accomplish a similar, broad purpose (e.g., Housing, Infrastructure, or Economic Development) or are based on an area of service (e.g., Community A). If a grantee submits a partial Action Plan or amendment to describe just one program (e.g., Single Family Rehabilitation), that program is entered as a project in DRGR. Further, the budget of the program would be identified as the project’s budget. If a State grantee has only identified the Method of Distribution (MOD) upon HUD’s approval of the published Action Plan, the MOD itself typically serves as the projects in the DRGR system, rather than the activities. As funds are distributed to subgrantees and subrecipients, who decide which specific activities to fund, those activity fields are then populated.

b. Paragraph 23 at 78 FR 14344 is amended to exclude the requirement for grantees to “enter information on contracts in the DRGR system activity profiles (for all contracts valued over \$25,000)” and now reads as follows: “Public Web site. The Appropriations Act requires grantees to maintain a public Web site which provides information accounting for how all grant funds are used, and managed/administered, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its Web site: the Action Plan (including all amendments); each QPR (as created using the DRGR system); procurement policies and procedures; status of services or goods currently being procured by the grantee—e.g., phase of the procurement, requirements for proposals, etc.; a copy of contracts the grantee has procured directly; and a summary of all procured contracts, including those procured by the grantee, recipients, or subrecipients. Grantees should post only

those contracts subject to 24 CFR 85.36 or in accordance with the State's procurement policies. To assist grantees prepare this summary, HUD has developed a template. The template can be accessed at: <https://www.onecpd.info/cdbg-dr/>. Grantees are required to use this template, and attach an updated version to DRGR each quarter as part of their QPR submissions. Updated summaries must also be posted quarterly on each grantee's Web site."

2. Incorporation of clarifications and requirements for grantees in receipt of grant awards made by HUD in response to disasters occurring in 2011 or 2012. Grantees in receipt of funds under the Appropriations Act for disasters occurring in 2011 or 2012 (see the Notice published in the **Federal Register** May 29, 2013, at 78 FR 32262) are advised that the following paragraphs in section VI. (Applicable Rules, Statutes, Waivers, and Alternative Requirements) of the Notice published November 18, 2013 apply to grant funds provided pursuant to Public Law 113-2: 3.b. (Liquid Fuel Supply Chain Assistance); 5. (Reimbursement of disaster recovery expenses); 6. (Duplication of benefits); 7. (Eligibility of needs assessment and risk analysis costs); 8. (Eligibility of mold remediation); 9. (Eligibility of public services and assistance to impacted households); 10. (Modification of the alternative requirement related to small business assistance); and 11. (Eligibility of Local Disaster Recovery Manager costs) (see 78 FR 69108 through 69110). These paragraphs impose or clarify general requirements or provide additional flexibility in program design and implementation to support resilient recovery following the 2011 and 2012 disasters, while also ensuring that statutory requirements unique to the Appropriations Act are met. Any new requirements established by this paragraph are applicable to all programs initiated in an Action Plan Amendment subsequent to the date of this Notice.

3. Tenant-based rental assistance (State of New Jersey, only). The State of New Jersey has requested a waiver of 42 U.S.C. 5305(a) in order to provide tenant-based rental assistance to

households impacted by disasters eligible under the Appropriations Act. Eligible assistance includes rental assistance and utility payments and may also include rental costs (i.e., security deposits and utility deposits) when the grantee determines that such payments are necessary to help prevent a household from being homeless. While existing CDBG regulations allow payments for these purposes, those regulations limit assistance to a period not to exceed three months. The State's tenant-based rental assistance will be funded through its Supportive Services program, will be limited to the beneficiaries of that program as described in the State's approved Action Plan, and will not be tied to HUD's Section 8 program assistance.

As a result of Hurricane Sandy, thousands of households in New Jersey were displaced and need housing at a time when the State's housing stock had been substantially reduced. The decrease in the housing supply placed upward pressure on housing costs, making housing less affordable for households already strained by hurricane-related expenses. To date, the State has invested more than \$320 million to support the rehabilitation or construction of new affordable rental housing (to create approximately 7,000 units); however, the most vulnerable of Sandy-displaced households—including very low-income persons—continue to need immediate rental assistance until construction of affordable rental units is completed and those units become available.

The goal of this waiver is to minimize the time households are homeless by providing re-housing and rental assistance, and by linking the person or family with services that can help them become stable and self-sufficient. Throughout the rental period, assisted households will receive referrals to available long-term units, as well as housing counseling. Further, the State plans to establish a referral process that will enable the targeted households to apply to live in the affordable housing units created under other CDBG-DR funded programs.

The State's use of CDBG-DR funds for this purpose advances the Department's priority to support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness. In addition, HUD has previously granted the States of Louisiana and New York, as well as New York City, similar waivers in response to Hurricanes Katrina, Rita, and Sandy. After reviewing the State's request, HUD is waiving 42 U.S.C. 5305(a), to the extent necessary, to make eligible up to \$17 million in rental assistance and utility payments paid for up to 2 years on behalf of homeless and at-risk low- and moderate-income households displaced by Hurricane Sandy, when such assistance or payments are part of a homeless prevention or rapid re-housing program or activity. The Department is approving the State's request for a waiver to allow for the payment of tenant-based rental assistance. This waiver is in effect from January 1, 2014 to January 1, 2016.

4. Documentation of Low- and Moderate-Income National Objective for Multi-Unit Housing Projects (State of New Jersey, only). Per the HCD Act and the Prior Notices, Hurricane Sandy CDBG-DR grantees may fund the rehabilitation, reconstruction, and new construction of housing. To further address its housing needs, the State of New Jersey has requested to measure the benefit to low- and moderate-income households, in multiunit residential projects, in a manner more supportive of mixed income housing. In general, the applicable regulation, 24 CFR 570.208(a)(3), requires at least 51 percent of the units in an assisted multi-unit structure to be occupied by residents that are income eligible. This method of calculating the benefit to low- and moderate-income households is often referred to as the structure basis.

HUD has reviewed other housing assistance programs that measure benefit differently—only those units in a multi-unit structure occupied by income eligible residents are used to calculate the benefit to low- and moderate-income households. Under this “unit” approach, when

units are alike, the proportion of CDBG funds contributed to the project may be no more than the proportion of units in the project that will be occupied by income-eligible households. For this reason, this approach is sometimes called the proportional units approach. In other words, the rule under the structure approach is that a dollar of CDBG assistance to a structure means that 51 percent of the units must meet income requirements. Under the unit approach, the amount of assistance provided is equal to the cost of units occupied by low- and moderate-income households.

Based on HUD experience, the unit approach can be more compatible with large-scale development of mixed-income housing. For example, in response to the widespread devastation caused by Hurricanes Katrina and Rita, HUD allowed the states of Louisiana and Mississippi to use this approach under their respective CDBG–DR programs. Additionally—(1) the CDBG program rule has a built-in exception that allows limited use of the unit basis for multi-unit non-elderly new construction structures with between 20 and 50 percent low- and moderate-income occupancy, (2) in the HOME Investment Partnerships program, HUD’s primary housing production program, HUD grantees use funds to pay for the cost of affordable units, and (3) the Neighborhood Stabilization Program permitted grantees to use a unit basis approach to meet the CDBG low- and moderate-income benefit requirement.

After review of the State of New Jersey’s Action Plan for Disaster Recovery, and discussions with the State regarding its intent to encourage mixed-income housing development, HUD has determined that it is consistent with the overall purposes of the HCD Act to provide the State the requested additional flexibility in measuring program benefit. Therefore, the waiver and alternative requirements allow the State to measure benefit within a housing development project: (1) according to the existing CDBG requirements or (2) according to the unit approach described

above for multi-unit housing projects involving rehabilitation and/or reconstruction. However, the second option may only be used if the units are generally comparable in size and finishes. The State must select and use one method for each project. For these purposes, the term “project” will have the same meaning as in the HOME program at 24 CFR 92.2. The State is reminded that per 2 CFR part 225, CDBG–DR costs must be necessary and reasonable. To meet this requirement, the State must develop policies and procedures to document its costs for housing investments are necessary and reasonable. The State must also meet all civil rights and fair housing requirements and comply with any applicable civil rights or fair housing related voluntary compliance agreements, settlement agreements, or consent decrees.

5. Limited purpose modification of overall benefit requirement (Luzerne County, Pennsylvania, only). The primary objective of the Housing and Community Development Act is the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income” (42 U.S.C. 5301 et seq.). To carry out this objective, the statute requires that 70 percent of the aggregate of the grantee's CDBG program’s funds be used to support activities benefitting low- and moderate-income persons.

This target can be difficult, if not impossible, for many CDBG-DR grantees to reach as a disaster impacts entire communities—regardless of income. Further, it may prevent grantees from providing assistance to the most damaged areas of need. Therefore, as described by the Prior Notices, Luzerne County, in addition to the other grantees under the Appropriations Act, received a waiver and alternative requirement—only 50 percent of funds must be used for activities that benefit low- and moderate-income persons. Additional flexibility was provided in the March 5, 2013 Notice (78 FR 14329) and the May 29, 2013 Notice (FR 32262), which is applicable to

Luzerne County. It allows a grantee to request a further reduction of its overall benefit requirement by submitting a justification that, at a minimum: (a) identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/ programs identified in (b) prevent the grantee from meeting the 50 percent requirement; and (d) demonstrates that the needs of non-low and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them. After review of grantee requests, under the Appropriations Act, HUD can grant such a waiver request only if the Secretary finds a compelling need to reduce the overall benefit below 50 percent.

In response to the above, Luzerne County submitted justification addressing the required criteria. As described in the correspondence, the county has received two awards of CDBG-DR funds (appropriated under two separate laws and totaling more than \$25.5 million) in response to disasters that occurred in 2011 (Hurricane Irene and Tropical Storm Lee). The county's first allocation was for \$15,738,806 under Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112-55, approved November 18, 2011). The second allocation to the county for \$9,763,000 was made under Pub. L. 113-2.

Initially, the county's first award allocated funds to acquisition/buyouts, housing rehabilitation and mitigation, and infrastructure. The county anticipated that buyouts would be primarily paid for using FEMA funds under the FEMA's Hazard Mitigation Grant Program; CDBG-DR funds would provide the local match (25 percent). However, following approval of the county's CDBG-DR Action Plan, FEMA announced that requests for acquisition far exceeded

available funds. Thus, citizens and local elected officials requested that CDBG-DR address this unmet need. In response, the county participated in public meetings to gauge the scope of unmet need. It was determined that approximately 100 residential properties (across 14 jurisdictions) could not be funded by FEMA, but those property owners wished to participate in a voluntary buyout program. Additionally, while other citizens were no longer interested in a buyout (they were either back in their homes or would be soon), they were in need of assistance to elevate or otherwise mitigate their disaster-impacted homes. As a result, the county amended its Action Plan to pay 100 percent of the costs associated with acquiring properties, and demolishing any structures, in order to assist participating households' recovery in a safer area, and reduce future flood hazards and prevent the loss of life. In counties such as Luzerne with a history of flooding, the need for a buyout program is particularly compelling. The county's buyout activities (\$11,951,625 for residential properties and \$1 million for commercial properties) will use the majority of its first CDBG-DR allocation. The remainder of funds are programmed to infrastructure (\$1.2 million) and administration and planning (\$1.6 million). While the Action Plan includes housing rehabilitation as an eligible activity, this will only be funded if all buyout needs have been addressed and CDBG-DR funds are available.

Of note, Luzerne County's residential buyout program is prioritizing low- and moderate-income property owners. To date, of the 100 properties estimated to participate in the program, 68 property owners have submitted pre-applications. An initial review shows that only 30 of the 68 owners are low- and moderate-income households (44 percent). Approximately 44 percent of the households will be of low- and moderate-income, and the county estimates that of the total amount budgeted for residential buyouts, \$3,940,715 will benefit low- and moderate-income households. In addition, the county has plans to address the needs of low- and moderate income

households it moves out of harm's way, through a down payment assistance to assist households who require assistance in buying a replacement home. As applications with the greatest need under the infrastructure program and the commercial buyout programs are not in areas with significant low-and moderate- income populations, these programs will not help the county meet its overall benefit requirement. The county anticipates an overall low- and moderate-income benefit of 27.82 percent for its first CDBG-DR allocation.

In regards to the county's second award of CDBG-DR funds, the primary activity to be funded is infrastructure (\$8,786,700). The remaining funds, \$976,300, are for administration and planning. As the census tracts and block groups most impacted by the 2011 disasters and in need of assistance are not predominately low- and moderate-income, and as infrastructure activities generally only meet the low- and moderate-income national objective on an area basis, the county has requested a reduction of the overall benefit requirement for this grant as well. (The county is prioritizing infrastructure activities with this grant due to the significant unmet needs demonstrated. Further, market studies indicate little demand in the county for new housing stock and the county's business assistance program received no applications). Based on infrastructure applications received to date, the county anticipates that three projects, totaling \$3,268,000, will benefit low- and moderate-income households on an area basis. Thus, the overall low- and moderate-income benefit for the second grant award is projected to be 37.19 percent.

To enable the county to undertake the activities it has deemed most critical for its recovery, and to ensure that low- and moderate-income households are adequately served and/or assisted, HUD is granting a limited waiver and alternative requirement to reduce the overall benefit from 50 percent to not less than 27 percent for the county's first allocation of CDBG-DR funds, and to not less than 37 percent for the county's second allocation of CDBG-DR funds.

Based on the county's justification, the Secretary has found a compelling need for this reduction due to the unique circumstances related to Luzerne County's request. In particular, HUD notes that the county prioritized the needs of low- and moderate-income populations with its first allocation; the county has identified getting people out of harm's way as a top priority and this waiver will allow low- and moderate-income families to take advantage of Luzerne's program for this purpose; and finally, the waiver will enable the county to undertake critical infrastructure activities necessary to its recovery. This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to permit the county to use funds appropriated by Public Law 112–55 for its residential buyout program, to use funds appropriated by Public Law 113-2 for its infrastructure program, as described by the county's Action Plans.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice is as follows: 14.269.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at [24 CFR part 50](#), which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: July 7, 2014.

Clifford Taffet,
General Deputy Assistant Secretary for
Community Planning and Development.

[FR Doc. 2014-16316 Filed 07/10/2014 at 8:45 am; Publication Date: 07/11/2014]